

# House File 2133 - Introduced

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BY SALMON

## A BILL FOR

1 An Act relating to censorship of expression on interactive  
2 computer services and social media platforms and including  
3 retroactive applicability provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1. NEW SECTION.   **659B.1 Definitions.**

2     As used in this chapter, unless the context otherwise  
3 requires:

4     1. "*Censor*" means any action to edit, alter, block, ban,  
5 delete, remove, deplatform, demonetize, de-boost, regulate,  
6 restrict, inhibit the publication or reproduction of, deny  
7 equal access or visibility to, suspend the right to post,  
8 remove, or otherwise discriminate against expression. "*Censor*"  
9 also includes actions that deplatform a person or that inhibit  
10 or restrict an interactive computer service or social media  
11 user's ability to be viewed by or interact with another user of  
12 the platform.

13    2. "*Expression*" means any word, music, sound, still or  
14 moving image, number, or other perceivable communication.

15    3. "*Interactive computer service*" means an information  
16 service, system, or access software provider that provides  
17 or enables computer access by multiple users to a computer  
18 server. "*Interactive computer service*" does not include a  
19 person providing connectivity to the internet or another wide  
20 area network.

21    4. "*Receive*", with respect to an expression, means to read,  
22 hear, look at, access, or gain access to the expression.

23    5. "*Social media platform*" means an internet search engine,  
24 internet website, internet system, access software provider,  
25 or application that is open to the public, allows a user  
26 of the platform to create an account, and enables users to  
27 communicate with one another for the primary purpose of posting  
28 information, comments, messages, or images. "*Social media*  
29 *platform*" does not include any of the following:

30     a. An internet service provider.

31     b. Electronic mail.

32     c. An online service, application, or website that consists  
33 primarily of news, sports, entertainment, or other information  
34 or content that is not user generated but is preselected by  
35 the provider and for which any chat, comments, or interactive

1 functionality is incidental to, directly related to, or  
2 dependent on the content.

3 6. "*Unlawful expression*" means an expression that is  
4 unlawful under the Constitution of the United States, federal  
5 law, the Constitution of the State of Iowa, or the laws of this  
6 state, including expression that constitutes a tort under the  
7 laws of this state or the United States.

8 7. "*User*" means a person who posts, uploads, transmits,  
9 shares, or otherwise publishes or receives expression, through  
10 a social media platform. "*User*" includes a person who has a  
11 social media platform account that the social media platform  
12 has disabled or locked.

13 Sec. 2. NEW SECTION. **659B.2 Prohibited actions.**

14 1. An interactive computer service or social media platform  
15 shall not censor a user, a user's expression, or a user's  
16 ability to receive the expression of another person based on  
17 any of the following:

18 a. The viewpoint of the user or another person.

19 b. The viewpoint represented in the user's expression or  
20 another person's expression.

21 c. The geographic location of a user in the state.

22 2. This section applies regardless of whether the viewpoint  
23 is expressed on an interactive computer service, a social media  
24 platform, or through any other medium.

25 Sec. 3. NEW SECTION. **659B.3 Waiver prohibited.**

26 1. A waiver or purported waiver of the protections provided  
27 by this chapter is void as unlawful and against public policy,  
28 and a court or arbitrator shall not enforce or give effect  
29 to the waiver, including in an action brought under section  
30 659B.7, notwithstanding any contract or choice-of-law provision  
31 in a contract.

32 2. The waiver prohibition shall not apply to contractual  
33 waivers to the extent such application would impair the  
34 obligation of contract in violation of the Constitution of the  
35 State of Iowa.

1     3. The waiver prohibition is a public policy limitation  
2 on contractual and other waivers of the highest importance  
3 and interest to the state, and the state is exercising and  
4 enforcing this limitation to the full extent permitted by the  
5 Constitution of the United States and the Constitution of the  
6 State of Iowa.

7     Sec. 4. NEW SECTION.   **659B.4 Applicability.**

8     1. This chapter applies only to a user who does any of the  
9 following:

10    *a.* Resides in this state.

11    *b.* Engages in business in this state.

12    *c.* Shares or receives expression in this state.

13    2. This chapter applies only to expression that is shared or  
14 received in this state.

15    3. This chapter applies only to a social media platform that  
16 functionally has more than fifty million active users in the  
17 United States in a calendar month.

18    4. This chapter applies to the maximum extent permitted  
19 by the Constitution of the United States and the laws of the  
20 United States but no further than the maximum extent permitted  
21 by the Constitution of the United States and the laws of the  
22 United States.

23     Sec. 5. NEW SECTION.   **659B.5 Limitations.**

24    1. This chapter does not subject an interactive computer  
25 service or a social media platform to any cause of action or  
26 liability to the extent the interactive computer service or  
27 social media platform is protected from causes of action or  
28 liability by federal law.

29    2. This chapter does not prohibit an interactive computer  
30 service or social media platform from any of the following:

31    *a.* Censoring expression that the interactive computer  
32 service or social media platform is specifically authorized to  
33 censor by federal law.

34    *b.* Censoring unlawful expression, including expression that  
35 unlawfully harasses individuals or unlawfully incites violence.

1     3. This chapter does not prohibit an interactive computer  
2 service or a social media platform from authorizing or  
3 facilitating a user's ability to do any of the following:

4     *a.* Limit the user's reception of obscene, lewd, lascivious,  
5 filthy, excessively violent, harassing, or otherwise  
6 objectionable expression at the specific active request of that  
7 user.

8     *b.* Censor obscene, lewd, lascivious, filthy, excessively  
9 violent, harassing, or otherwise objectionable expression on a  
10 specific active request of the user.

11     Sec. 6. NEW SECTION. **659B.6 Construction of chapter.**

12     1. This chapter shall not be construed to apply to an  
13 interactive computer service or a social media platform  
14 to the extent the interactive computer service or social  
15 media platform is merely providing expression to a user in a  
16 particular instance in response to that user's express request  
17 in that particular instance for expression limited on the basis  
18 of viewpoint or geographic location.

19     2. This chapter shall not be construed to apply to  
20 commentary by an interactive computer service or a social media  
21 platform, except to the extent the commentary is presented in a  
22 manner that delays or diminishes the visibility of expression,  
23 delays or denies the equal access to the commentary, or  
24 otherwise censors the commentary in violation of section  
25 659B.2.

26     3. This chapter shall not be construed to limit or expand  
27 intellectual property law.

28     4. This chapter shall not be construed to apply to actions  
29 in which this chapter would violate the doctrine on the dormant  
30 commerce clause enunciated by the supreme court of the United  
31 States.

32     Sec. 7. NEW SECTION. **659B.7 User remedies.**

33     1. A user may bring an action against an interactive  
34 computer service or a social media platform that violates this  
35 chapter with respect to the user.

1     2. If the user proves that the interactive computer  
2 service or a social media platform violated this chapter with  
3 respect to the user, the user is entitled to recover all of the  
4 following:

5     a. Declaratory relief, including costs and reasonable and  
6 necessary attorney fees.

7     b. Injunctive relief.

8     c. Civil damages for each act of censorship of seventy-five  
9 thousand dollars.

10    3. If an interactive computer service or a social media  
11 platform fails to promptly comply with a court order in an  
12 action brought under this section, the court shall hold the  
13 interactive computer service or social media platform in  
14 contempt and shall use all lawful measures to secure immediate  
15 compliance with the order, including daily penalties sufficient  
16 to secure immediate compliance.

17    4. A user may bring an action under this section regardless  
18 of whether another court has declared any provision of this  
19 chapter unconstitutional unless that court decision is binding  
20 on the court in which the action is brought.

21    5. Nonmutual issue preclusion and nonmutual claim  
22 preclusion are not defenses to an action brought under this  
23 section.

24    Sec. 8. NEW SECTION.   **659B.8 Limitations on public**  
25 **enforcement.**

26    Notwithstanding any other law, the requirements of this  
27 chapter shall be enforced exclusively through the private  
28 civil actions described in section 659B.7. Enforcement of  
29 this chapter shall not be taken or threatened by the state, a  
30 political subdivision, a county attorney, or any executive or  
31 administrative officer or employee of the state or political  
32 subdivision against any person, except as provided by section  
33 659B.7.

34    Sec. 9. **RETROACTIVE APPLICABILITY.** This Act applies  
35 retroactively to a user before the effective date of this Act

1 to remedy censorship of the user's ability to share or receive  
2 expression that occurred before the effective date of this Act  
3 if censorship continues after this Act takes effect.

4 EXPLANATION

5 The inclusion of this explanation does not constitute agreement with  
6 the explanation's substance by the members of the general assembly.

7 This bill relates to censorship of expression on interactive  
8 computer services and social media platforms. The bill  
9 defines "censor", "expression", "interactive computer service",  
10 "receive", "social media platform", "unlawful expression", and  
11 "user".

12 The bill prohibits an interactive computer service or social  
13 media platform from censoring a user's expression based upon  
14 the viewpoint of the user or another person, the viewpoint  
15 represented, or the geographic location of a user in the state.

16 The bill does not allow an interactive computer service or  
17 social media platform to create a waiver of the protection  
18 provided within the bill.

19 The bill applies only to users who reside, do business  
20 within, or share within the state and the expression is done on  
21 a 50-million user interactive computer service or social media  
22 platform within the state.

23 The bill does not subject an interactive computer service  
24 or a social media platform to any cause of action or liability  
25 that the interactive computer service or social media platform  
26 is protected from by federal law. An interactive computer  
27 service or social media platform may censor expression that  
28 the interactive computer service or social media platform is  
29 specifically authorized to censor by federal law and that  
30 unlawfully harasses individuals or unlawfully incites violence.  
31 An interactive computer service or a social media platform may  
32 authorize a user's ability to receive objectionable expression  
33 at the specific active request of that user.

34 The bill does not apply to an interactive computer service or  
35 a social media platform that is providing expression to a user

1 in a particular instance in response to that user's express  
2 request or to commentary by an interactive computer service or  
3 a social media platform. The bill does not change existing  
4 intellectual property law or violate doctrine on the dormant  
5 commerce clause.

6 The bill provides remedies for a user's expression that  
7 was unlawfully limited. The bill authorizes a user to bring  
8 an action for a violation of the provisions of the bill and a  
9 prevailing user is entitled to declaratory relief, including  
10 costs and reasonable and necessary attorney fees, injunctive  
11 relief, and civil damages for each act of censorship of  
12 \$75,000. A court must hold an interactive computer service or  
13 a social media platform in contempt if it fails to promptly  
14 comply with a court order. The bill may only be enforced  
15 through private civil action and not by public officials or  
16 entities.

17 The bill applies retroactively to a user before the  
18 effective date of the bill to remedy censorship of the user's  
19 ability to share or receive expression that occurred before the  
20 effective date if censorship continues after the bill takes  
21 effect.